

Vol. 1
1956

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of
MARGARET E. TOOHEY,
a Bankrupt.

MAZIE McLEOD and EDWIN J. MILLER,
Appellants,

vs

DAN BOONE, a petitioning Creditor, and HUBERT
F. LAUGHARN, trustee in bankruptcy,
Appellees.

Transcript of Record.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Solicitors.

For Appellants:

EDWIN J. MILLER, Esq.,
Grosse Building,
Los Angeles, California.

For Appellees:

MOTT, VALLEE & GRANT, Esqs.,
KENNETH E. GRANT, Esq.,
Citizens National Bank Building,
GILBERT B. HUGHES, Esq.,
Chapman Building,
Los Angeles, California.

ORIGINAL

United States of America, ss.

To DAN BOONE, a petitioning creditor, and to
HUBERT F. LAUGHARN, trustee, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 23rd day of OCTOBER, A. D. 1935, pursuant to an appeal duly obtained and filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause entitled, In the Matter of the Estate of Margaret E. Tooley, Bankrupt, In Bankruptcy No. 16976C, wherein Dan Boone is petitioning creditor, and Mazie McLeod and Edwin J. Miller are creditors and objectors to the petition of Dan Boone, and wherein the said Mazie McLeod and Edwin J. Miller, are appellants, and you are appellees to show cause, if any there be, why the order made by the Hon. George Cosgrave, Judge, on or about September 6, 1935, denying the petition of appellants for a reversal of the subrogation order of the Referee, in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable George Cosgrave, United States District Judge for the Southern District of California, this 23rd day of September, A. D. 1935, and of the Independence of the United States, the one hundred and sixtieth.

Geo. Cosgrave

U. S. District Judge for the Southern
District of California.

Los Angeles, California, September 23, 1935.

Service of the foregoing citation is hereby acknowledged by the appellees, Dan Boone and Hubert F. Laugharn, as trustee, by the receipt of a copy of the foregoing Citation for each of said appellees, the above date.

G. B. Hughes

K. E. Grant

Attorneys for said Appellees.

[Endorsed]: Filed Dec 27 1935 at 2:55 p. m. R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA CENTRAL DIVISION

In the Matter of)	
)	
MARGARET E. TOOHEY,	)	In Bankruptcy No. 16976-C
)	
a bankrupt.)	
<hr style="width: 80%; margin-left: 0;"/>)	

PETITION FOR ALLOWANCE ON ACCOUNT OF
EXPENDITURES AND SERVICES IN BE-
HALF OF BANKRUPT ESTATE.

TO THE HONORABLE RUPERT B. TURNBULL,
Referee IN BANKRUPTCY:

Comes now your petitioner, DAN BOONE, and respectfully represents to the court as follows:

I.

That prior to the adjudication of the above-named bankrupt, your petitioner, a creditor of Tooey Corporation, owned entirely by Margaret E. Tooey, the above bankrupt, was instrumental in instituting action in the United States District Court, seeking the appointment of a receiver for said corporation. Action was brought by Mazie McLeod, as complainant, she being the only non-resident creditor of the corporation known to petitioner at that time. On proceedings duly taken in the United States District Court an order was made for the appointment of a receiver, and Hubert F. Laugharn was appointed by the court to serve in such capacity. Immediately on appointment the receiver employed your peti-

tioner to act as his agent in all matters pertaining to the receivership because of petitioner's knowledge of the business of the corporation.

II.

That at said time the corporation was the owner of certain real properties, one of which was the Central Building, located at 32 North Raymond, Pasadena, California, a limit-height building, which at said time was subject to a heavy bond issue under which Bank of America National Trust and Savings Association was the trustee. That when foreclosure proceedings were commenced against said Central Building, petitioner, at the direction of the receiver, brought action in the Superior Court of the State of California, at Los Angeles, seeking to compel said foreclosing trustee to account for certain payments alleged to have been made by the Tooley Corporation, which, if properly credited, would have cured any alleged default on the part of the corporation. That after trial of the cause judgment in favor of the foreclosing trustee was entered, and on subsequent sale of the property title thereto was evested in a committee representing the bondholders. That thereafter your petitioner instituted suit against the Bond Holders Committee, alleging fraud in the acquisition of the property through trustee's sale and praying that sale of the property be set aside and title thereto vested in the receiver for Tooley Corporation. That said action likewise proved unsuccessful, and judgment was entered against plaintiff, who thereupon instituted appeal, which was never prosecuted in the appellate courts.

That in the aforesaid proceedings your petitioner advanced, or secured the advancement on his own credit, of

all necessary expenses, including court costs and attorney's fees. That all of his expenditures, both of time and money were made in an effort to preserve the assets of Tooley Corporation for the benefit of all creditors thereof. In said proceedings petitioner was represented by attorney Edwin J. Miller.

III.

That while petitioner was acting as said receiver's agent he made a full and complete investigation of the affairs of said Tooley Corporation, in the course of which it was also necessary for him to investigate the financial status of Margaret E. Tooley, owner of all of the capital stock of the company. That in the course of this investigation it came to his knowledge that Margaret E. Tooley on the death of her husband had become the owner of certain properties located in the Oklahoma City oil field. After making this discovery petitioner went to Oklahoma, City, where he learned that almost immediately after the filing of the receivership proceedings in the United States District Court at Los Angeles Margaret E. Tooley had transferred her oil properties to one Grant Egbert and his wife for a purported consideration of \$7000.00; the same investigation disclosed that after making the conveyance to Grant Egbert and wife Margaret E. Tooley had delivered certain mortgages on the oil property, one of which was to Mazie McLeod, who had been the complainant in the receivership action.

IV.

That petitioner thereupon returned to Los Angeles and in conjunction with Mark Roberts & Company and Equity Building and Loan Association, two other creditors of Tooley Corporation, instituted these involuntary proceed-

ings in bankruptcy in the United States District Court at Los Angeles, against Margaret E. Tooley; that no proceedings were taken immediately in said matter and thereafter, about September of 1931, your petitioner secured the services of Mott, Vallee and Grant and Gilbert B. Hughes to prosecute said bankruptcy proceedings, with the idea of eventually recovering for the creditors of the estate, if possible, the certain oil properties previously conveyed by Mrs. Tooley, which in the meantime had turned out to be of very considerable value.

V.

That petitioner advanced all necessary costs for the prosecution of said bankruptcy proceedings, and after Margaret E. Tooley was adjudicated a bankrupt, and Hubert F. Laugharn appointed trustee of her estate, he was appointed trustee's agent; from that time your petitioner was closely associated with Mott, Vallee and Grant and Gilbert B. Hughes in the prosecution of action on behalf of the trustee against Grant Egbert and wife for the recovery of the oil property, and as trustee's agent made four trips to Oklahoma City, investigating the situation with reference to the litigation. Prior to the adjudication, and while acting as agent for the equity receiver, he had made two trips to Oklahoma City.

VI.

That your petitioner has in no way been reimbursed for the amount of his expenditures or for his services on behalf of the creditors of the above-named bankrupt, although heretofore, on or about February 20, 1933, he filed claim herein for \$3856.79 for his expenditures and services to said date, payment of which from any moneys accruing to them from the above estate, was approved by

the following named creditors, to-wit: Mazie McLeod, E. H. Martin, Mark Roberts & Co., Inc., Equity Building & Loan Association and J. C. Aldrich, as shown on the face of the instrument or claim filed herein by petitioner on February 20, 1933, as aforesaid, a true copy of which is hereto attached, marked "Exhibit A".

That on July 6, 1931 the involuntary petition was filed herein, and on August 26, 1932 an order of adjudication was made herein, after contest; that during the said period of time your petitioner, upon behalf of all creditors generally and in the furtherance of the said involuntary proceedings expended certain sums for the purpose of securing evidence, interviewing witnesses, securing information and data, making trips to Oklahoma, etc., in the sum of \$2,073.85 which said disbursements are included in the total of Exhibit "A", but which are itemized and set forth in Exhibit "B" hereto attached and made a part hereof.

VII.

Petitioner alleges that from August 26, 1932, the date of adjudication herein, until the present time, petitioner has rendered further services herein and has expended further sums of money in the administration of the estate, assistance in the trial of the plenary suit to recover the interest in the oil wells, securing of statements and data, trips to Oklahoma City, etc., and in this connection your petitioner has expended the sum of \$1,434.71 for the benefit of the administration of the estate. Said disbursements made by petitioner since the date of adjudication are set forth in detail in Exhibit "C" hereto attached and made a part hereof. Your petitioner alleges that the same are proper charges of administration in this

estate and that petitioner should be repaid and reimbursed the said sum.

VIII.

That since the filing of the involuntary petition herein to the present time your petitioner, in furtherance of said petition and as trustee's agent subsequent to adjudication, has performed services herein for which no compensation has at any time been made him; that said services have consisted of investigation work both in California and in Oklahoma, and have required the time and attention of petitioner off and on since the filing of the involuntary petition.

Among other things such services have included since said date four trips to Oklahoma; that said services and the time consumed therein are in part more fully reflected in Exhibit "D" hereto attached and made a part hereof; that the reasonable value of said services is in the sum of \$1,490.00.

WHEREFORE your petitioner prays:

1. That he be repaid the sum of \$1,434.71 on account of costs advanced herein in assisting in the administration of the estate, trial of the plenary action, trips to Oklahoma City, etc., all as more specifically set forth in Exhibit "C" attached hereto;

2. That he be paid herein from the estate, compensation in the sum of \$1490.00 for his services from the date of the filing of the involuntary petition to the present date;

3. That an order be made herein directing the trustee to deduct from any dividends hereafter accruing to those creditors referred to in Exhibit "A" hereto attached their

EXHIBIT "B"

BANKRUPTCY PETITION FILED AGAINST
MARGARET E. TOOHEY JYLY 6th, 1931COSTS AND EXPENSES PAID BY DAN BOONE
FOR THE BENEFIT OF ALL CREDITORS.

AS FOLLOWS:

32	#16976C. Filing costs Bank- ruptcy Pettition	7/6/31	\$ 30.00
33	U. S. Marshall/s fee service on Mrs. Tooley	7/6/31	3.00
34	" " " " " defendants	7/6/31	10.00
35	S. R. Harrington Atty. costs Ppr. Pettition	7/6/31	10.00
36	Notarys fees creditors signatures	7/6/31	1.50
37	U. S. Marshall fee service etc.	8/4/31	10.00
38	H. K. Sarjent copying of notices	8/8/31	2.50
39	Stenographic fees (copies pettition)	8/8/31	1.00
40	S. R. Harrington Attys fees (balance)	8/10/31	75.00
41	Misc. costs Dan Boone re: filings etc.	8/12/31	10.00
43	Harrington Attys fees	7/30/31	25.00
44	Harrington " " <i>lies pendance</i>	7/25/31	10.00
45	Zimmerman Clerk filling costs	7/8/31	7.00
46	Recording <i>Lies pendance</i> County Clerk	7/9/31	1.80
47	L. E. Trip Atty. service costs Expenses Boone trip to Oklahoma City:	7/10/31	2.00

49	So. Pacific R. R. fare to Oklahoma City 7/10/31			86.50
50	Pullman ticket #9303	“	“	3.00
51	Baggage checking costs	“	“	.50
52	Pullman ticket #32088	“	“	6.00
53	Baggage check	“	“	.50
54	Pullman ticket #2117		“	4.50
55	Baggage check	“	“	.50
56	Pullman ticket #4349		“	3.00
57	Baggage check	“	“	.50
58	Pullman ticket #7152		“	7.20
59	Bus fare: Tulsa, Ponca City, Brookfield Mo. etc.			28.50
60	Meals Boone, and misc. expense 22 days at 3.00			66.00
61	Legal fees Durfee and steno- graphic costs, Okla.			32.50
62	Records, copies, certifications of mortgages, copies.			17.50
63	Myers Photo Shop, photographs of wells and copies			9.25
64	Hotel bill Black Hotel Oklahoma City			2.50
65	“ “ Bliss Hotel Tulsa Oklahoma			4.00

66	Whitcomb Hotel bill		3.00
67	Carolyn Hotel bill		2.50
68	Little Hotel Salt Lake City		2.00
69	Denver Hotel bill Denver Colorado		2.50
70	Misc. expenses telegrams etc.		6.50
71	Hotel Golden bill		3.00
72	Hotel Fort Worth bill		3.00
73	Hotel Houston bill		2.50
74	Hotel Broadview, Kansas City (Witchita)		3.00
75	Hotel Galveston bill		2.50
77	D. D. Service copying of Tooley Audit Los Angeles		10.00
78	Trip and expenses Oklahoma City Dan Boone	10/10/31	100.00
79	“ “ “ (van Lan- dingham) “ “	10/11/31	125.00
80	Bankruptcy petition costs “ “	6/6/31	16.50
81	Trip and expenses Boone Oklahoma City	10/10/31	125.00

Sheet No. 1

Costs continued sheet no. 2.

SHEET NO 2

Costs Continued

82	Trip by Boone to Carmel, And Paso Robles (2) 7 days—75.00— train fare and misc expenses Hotels etc.	6/10/31	
----	--	---------	--

83	Boone trip acct. Mark Roberts. Carmel etc.	7 days	62.00—	9/20/31
84	Boone trip to Paso Robles Re: incumbrances	3 “	38.00—	11/19/31
85	Bond premium on injunction bond to H. Devlin Co.		25.00	2/25/32
86	Filing fee Mark Roberts Co.		5.00	3/24/32
87	Trial costs, Tooley for all creditors		75.00	8/16/32
88	Gilbert B. Hughes Atty. advance by Boone Expenses Boone to Oklahoma City		30.00	3/24/32
89	Expenses R. R. Fare, Hotels, and Misc costs		350.00	10/7/32
90	R. B. Turnbull costs, of notice to creditors		17.70	10/31/32
91	Boone expense to Paso Robles 3 days		30.00	12/7/32
92	Telegram to Atty. John Durfee Tulsa Oklahoma Expense Boone to Oklahoma City;		1.60	12/7/32
93	Expense total R. R. Fare Hotels etc.		300.00	12/13/32
97	Bond premium to Fidelity Co. injunction bond		50.00	5/4/33
100	Boone expense to Oklahoma City		125.00	5/12/33
101	Boone misc. expense Oklahoma City		10.00	6/23/33
125	Telegram L. A. to Durfee Atty Oklahoma City		1.30	6/23/33
	Totals		<u>\$2073.85</u>	

EXHIBIT C

Costs paid by Dan Boone for the benefit of all creditors, of Margaret E. Tooley Bankrupt from the date of her adjudication in bankruptcy—Aug. 26, 1932

Monies paid as follows:

94	Expense wired by Boone to Durfee for costs to Oklahoma City	1/8/33	\$ 20.00
95	Dr. F. S. Barnard telegrams, and misc. expenses	1/8/33	10.00
96	Expense Boone trip to Paso Robles regarding settlement of Tooley Vs. Egbert	2/3/33	20.00
98	Boone expense R. R. Fare, Hotel, etc. Oklahoma at direction of Hubert F. Laugharn trustee to check monies impounded, to serve orders on all oil companies of pending litigations etc. to check records, get copies of incumbrances	5/5/33	250.00
99	Dr. Barnard telegrams and money orders to Boone	5/4/33	10.00
102	Notary fees, stenographic, and telegrams to Dr. Barnard Paso Robles, re: settlement	6/23/33	10.00
103	Copy of transcript of Mrs. Tooley for trial	6/30/33	20.00
104	Money paid to Kenneth Grant attorney for transmission to Attorney Durfee at Tulsa	8/24/33	50.00

105	Expenses of Boone to two trips to Carmel and Paso Robles, Re: case Tooley Vs. Egbert	9/1-9/18/33	85.00
106	Expenses of Mark Roberts Co. Re: litigation	11/21/33	70.00
107	Bond premium paid by Boone to Hartley Devlin Co. on \$5,000.00 injunction bond. Oklahoma	11/25/33	12.50
108	U. S. Marshall filing fees pd. by Boone	11/27/33	6.80
109	Hartley Devlin Co. Bond pre- mium paid	12/7/33	12.50
110	Mark Roberts expense and Costs	12/12/33	15.00
111	Boone expense to carmel and Paso Robles (2)	12/16/33	50.00
112	U. S. Marshall Service on Mrs. Tooley at Paso Robles for appearance " VS. Egbert	18/18/33	20.00
113	Tooley transcript for trial by Hughes (Boone)	1/30/34	44.85
114	Tooley Vs. Egbert reporters costs, etc.	12/29/33	15.00
115	Two trips by Boone to Paso Robles to get releases from Dr. Tape and Mrs. Tape 8 days	3/30/34	85.00
116	U. S. Marshall service on Mrs. Tooley Paso Robls	4/6/34	19.75
117	" " " " " " balance	4/10/34	5.80

118	Paid to Turnbulls Court Re; Laugharn Vs. Grant Egbert costs, Pd. by Boone	5/7/34	56.25
119	Costs Turnbulls Court Laugharn Vs. Egbert	5/8/34	56.25
120	Witness fees McBurney above trial 2 days	5/7-5/8/34	5.00
121	Witness fees paid to Sarjent for Mrs. Tooley	5/7-5/8/34	10.00
122	Boone trip to Paso Robles deeds from Dr. Tape	7/19/34	25.00
123	Boone trip to Paso Robles deeds from Mrs. Tape	11/10/34	35.00
			<hr/> 1,019.70

Costs Continued:

124	Atty. C. E. Spencer Equity Bldg. Loan paid		25.00
125	Trip to Oklahoma City at direc- tion of Laugharn R. R. Fare Oklahoma City, Tulsa, Kansas City, etc.	1/23/35	78.17
126	Return trip Boone Oklahoma to Los Angeles,	2/18/35	78.17
127	Certifications of notaries etc. deeds	1/18/34	1.50
128	Misc. expense Boone Bliss Hotel Oklahoma	1/28/35	1.60

129	Pullman Los Angeles, to Oklahoma to Kansas City	14.60
130	“ Oklahoma, Kansas City to Los Angeles,	14.60
131	Hotels room rent of Boone on trip 20 days at 2.00	40.00
132	Stamps and registered letters by Boone	.25
133	Maps and photos of oil properties Oklahoma (Myers)	4.00
134	Expense monies given by Boone to Atty. Dufee for title search and misc. expenses at Tulsa Oklahoma	74.40

Continued: sheet No 2

Expense of Boone to Oklahoma

Costs Continued Sheet No. 2

135	Boone telephone long distance from Oklahoma City to Los Angeles, to Kenneth Grant attorney	4.30
136	Telegram Boone from Oklahoma City to Los Angeles	.95
137	Stenographic expense at Oklahoma City Re; release of all impounded monies held by companies there	7.00

138	Telegram to Los Angeles, from Oklahoma City	.95
139	Bus fare Boone Bartlesville to Brookfield Mo	4.25
140	“ “ “ Brookfield to Bartlesville Okla	4.25
141	Telegram Brookfield to Los Angeles (night letter)	1.32
142	Misc. expense Boone en route and at Brookfield	3.00
143	Notary fees and certifications Oklahoma	1.00
144	Notarys fees on re conveyance McLeod	1.25
145	Re conveyance deeds Mrs. Tape and stenographic.	1.00
146	Misc. expense Boone Tulsa Hotel	2.25
147	Meals Dan Boone en route etc. At 2.00 per day	50.00
148	Telegram Boone to Durfee at Tulsa Oklahoma City	1.20
		<hr/> 415.01
	Totals expense sheet No 1	\$1,019.70
	Totals “ “ “ 2	415.01
	Grand total	<hr/> 1,434.71

[EXHIBIT D]

LABOR OF DAN BOONE TRUSTEES AGENT, APPOINTED BY HUBERT F. LAUGHARN TRUSTEE OF MARGARET E. TOOHEY BANKRUPT.

THE ITEMS OF LABOR FOR DAN BOONE LISTED BELOW IS ONLY FOR ACTUAL TIME SPENT ON THE VARIOUS TRIPS. AND NO TIME IS FIGURED FOR ALL COURT APPEARANCES, CONFERENCES WITH ATTORNEYS OF THE CREDITORS, MISC. LABOR INVESTIGATIONS FOR MR. LAUGHARN AND OR FOR THE ATTORNEYS FOR INVESTIGATIONS FOR A PERIOD OF FROM THE DATE OF THE FILING OF THE INVOLUNTARY PETITION AGAINST MRS. TOOHEY FROM JULY 6th. 1931 TO THE PRESENT TIME OF MARCH 21st. 1935 IN ACTUAL TIME SPENT OVER A PERIOD OF FOUR YEARS BY DAN BOONE FOR THE BENEFIT OF ALL CREDITORS THE AMOUNT OF COMPENSATION IS ACTUALLY AN AVERAGE OF \$370.00 PER YEAR FOR LABOR OF DAN BOONE FOR THREE YEARS—AS TRUSTEES AGENT.

A.	Labor Dan Boone filing involuntary petition	1 day at 10.	\$ 10.00
B.	42 " " 9/10/31 to 9/18/31	7 " " 10.	70.00
C.	48 " " 7/9/31 to 7/11/31	2 " " 10.	20.00
D.	76 " " 7/13/31 T Oklahoma	22 " " 10.	220.00

E.	"	"	"	Carmel, Paso Robles, Trials etc.	26	"	"	10.	260.00
F.	"	"	"	to Oklahoma City 10/10/31 to	22	"	"	10.	220.00
G.	"	"	"	Trip to Carmel etc. 6/10/31	7	"	"	10.	70.00
H.	"	"	"	" " " 9/20/31	7	"	"	10.	70.00
I.	"	"	"	" Paso Robles 11/19/31	3	"	"	10.	30.00
J.	"	"	"	" Oklahoma City 10/7/32	25	"	"	10.	250.00
K.	"	"	"	" Paso Robles 12/7/32	3	"	"	10.	30.00
L.	"	"	"	" Oklahoma City 12/13/32	23	"	"	10.	230.00
M.	"	"	"	" Trial Turnbull court					
				Tooyo Vs. Egbert	1	"	"	10.	10.00

Totals 1,490.00

[In ink]: 520 00/xx

[Endorsed]: Filed Mar 22 1935 at 10 Min. past 4 o'clock P.M. Rupert B. Turnbull, Referee C. M. Commins Clerk CD Filed R. S. Zimmerman, Clerk, at 25 min. past 1 o'clock. Dec. 28, 1935 P. M. By F. Betz, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PETITION FOR REVIEW OF REFEREE'S ORDER.
TO THE HON. RUPERT B. TURNBULL, REF-
EREE IN BANKRUPTCY:

Your petitioners, Mazie McLeod, and Edwin J. Miller, as assignee of Edward H. Martin, respectfully show the following:

I

That they are creditors of Margaret E. Tooley, the above named bankrupt, and that their respective claims have been allowed herein in the following amounts:

The claim of Mazie McLeod,	\$ 9,225.60
The claim of Edwin J. Miller, as assignee of E. H. Martin,	\$ 8,098.34

and orders of allowance have heretofore been entered herein accordingly.

II

That in the course of the proceedings in the above entitled bankrupt estate, to-wit, on the 11th day of June, 1935, an order of adjudication and subrogation giving certain moneys from said claims, and giving same to Dan Boone, copy of which is hereto annexed, and by reference made a part hereof, was made and entered herein by the Hon. Rupert B. Trumbull, referee.

III

That such order was and is erroneous, and in excess of the jurisdiction of this court and of this referee, and without authority of law in the following respects:

1. That there was and is no consideration of any kind or character for the alleged subrogation agreement (it being for alleged past expenditures of Dan Boone) which

formed a basis of the said order of the referee, and the same is invalid and unenforcible.

2. That the said alleged subrogation contract was never completed nor delivered for the purpose of becoming effective, to Dan Boone, but was handed to said Dan Boone by Edwin J. Miller conditionally, and for the purpose of obtaining the signature thereon of all the remainder of the creditors whose claims were filed against the estate of Margaret E. Tooley, bankrupt, and not otherwise; said signatures of said remaining creditors were only in part obtained; and a large part thereof were never obtained; and said contract never became binding.

3. That the claim of \$3856.79, being the basis of said supposed subrogation agreement was not a proper claim against said bankrupt estate, and has been disallowed by the referee; and the referee had no jurisdiction to do anything further about the same, nor to order any subrogation, nor to adjudicate thereon, it not being a part of the administration of the said bankrupt estate.

4. That the said \$3856.79 is, in a large part thereof, a duplication of other claims in favor of Dan Boone, which other claims have been allowed in whole or in part; and therefore invalid.

5. That the only consideration for the signing of the said subrogation agreement by the said Edwin J. Miller was the promise on the part of Dan Boone to said Miller that if he, the said Edwin J. Miller, would sign the same for the two creditors, viz., himself and Mazie McLeod, that he, the said Dan Boone would obtain the signatures of all other creditors of said estate thereto; said Miller relied on said promise, and because thereof signed same, and would not have signed same except for said promise; said signatures were not obtained, and said instrument never became effective nor binding.

6. That the claim of \$3856.79, and the items composing the same, and designated as costs and attorney's fees, are uncertain and unintelligible and ambiguous, and their validity is denied, and the same never was adjudicated by this court, nor any other court, and this court had no jurisdiction to adjudicate the same; and said order of June 11, 1935, is therefore erroneous; is in excess of the jurisdiction of this court and is void.

7. That the power of attorney giving Edwin J. Miller the power to represent Mazie McLeod in and about the allowance of her claim, gave no power or authority to give away her claim, or any part thereof; and the referee misconstrued the said power of attorney and said allowance is without authority of law or fact.

8. That Dan Boone represented that all creditors of said Margaret Tooy would sign said agreement if said Miller would do so; and stated that he, himself, represented practically all of said creditors whose claims were filed against said estate, and that all would sign same; that the claim of H. W. Ringle was represented by Mr. Grant, the attorney for said Boone, and that if said Miller would sign same for his clients, said Grant would sign same for said Ringle, and said Miller believed said representation and signed same, and except for his belief of said statements he would not have signed same; and said Grant, as attorney for said Ringle, did not sign, nor did said Ringle sign, and many of the other creditors promised by the said Dan Boone whose names would be signed to the same, did not sign; therefore, because of all of said defects; and because of said want of consideration; and of want of delivery; and because of the lack of jurisdiction of this court to make said order, and

because same is a disputed claim and invalid; these petitioners pray that the said order be reviewed and reversed and set aside, and said alleged subrogation proceeding be dismissed for want of jurisdiction.

9. That this proceeding is an attempt to enforce an uncompleted and unenforcible promise to make a gift; there is no consideration therefor, and it is unenforcible.

10. That the claim of \$3856.79 is based on alleged expenditures of services performed by said Dan Boone before the said bankruptcy proceeding was instituted, and are matters not pertaining to the bankruptcy proceeding; and this court has no jurisdiction to entertain this proceeding or adjudicate concerning the same.

11. That all evidence heard on said objections be transcribed and certified with this petition to the reviewing court.

WHEREFORE, your petitioners, feeling aggrieved because of such order, pray that the same may be reviewed as provided in the bankruptcy act of 1898 and of general order XXVII.

Dated: June 19, 1935.

MAZIE McLEOD, Petitioner,
By Edwin J. Miller
Her Attorney.

Edwin J. Miller
Edwin J. Miller, as assignee of
Edward H. Martin, Petitioner.

Filed Jun. 1935, at min past 3 o'clock P. M. Rupert B. Turnbull Referee. C. M. Commins Clerk E. B.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 23 min. past 2 o'clock Jun. 24, 1935 P. M. By Theodore Hocke Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

IN THE MATTER OF)	
)	
MARGARET E. TOOHEY,)	
)	
Bankrupt.)	
_____)	
	)	NO. 16976-C
MAZIE McLEOD and)	
EDWIN J. MILLER,	)	CONDENSED
	)	STATEMENT OF
Appellants,	)	EVIDENCE
	)	IN NARRATIVE
vs.	)	FORM.
)	
DAN BOONE and)	
HUBERT F. LAUGHARN,)	
Trustee,)	
Appellees.)	
)	

BE IT REMEMBERED That upon the hearing before the HON. RUPERT B. TURNBULL, Referee in Bankruptcy, in the matter of Margaret E. Tooley, bankrupt, relating to the contest of the claim for subrogation in favor of Dan Boone, and against Mazie McLeod and Edwin J. Miller, upon objections to said subrogation of Mazie McLeod and Edwin J. Miller, the following documents and files and verbal testimony were before the Referee, and introduced and considered in evidence, to-wit:

IN THE MATTER OF
MARGARET E. TOOHEY
BANKRUPT

NO. 16976-C

PETITION FOR ALLOW-
 ANCE TO CREDITOR
 TO COVER COSTS AND
EXPENSES

TO THE HONORABLE ROBERT B. TURNBULL:
REFEREE IN BANKRUPTCY:

THE PETITION OF DAN BOONE RESPECT-
 FULLY SHOWS THAT:

That your petitioner paid the costs of *Littigation*, etc.

That prior to the filing of the bankruptcy Petition in this matter your petitioner paid and expanded in connection with the filing of several civil suits, against the bankrupt. For the benefit of all creditors.

Evidence of all costs, for labor, and expenses, advanced, (including several trips to Oklahoma) have been approved for payment by the creditors, as evidenced by the attached itemized sums expanded by the petitioner and approved for payment—OUT of the first funds realized into the Estate, and deducted pro-rata from the first funds (dividends) payable on their claims.

The petitioner has not been reimbursed for any of said moneys, so expanded.

Wherefore your petitioner prays that an allowance be made to *lt* for the sum of Three Thousand Eight Hundred and Fifty Six Dollars, and Seventy Nine Cents. (\$3,856.79) to cover the sum so expanded.

Dated; February 21, 1933.

Dan Boone
 DAN BOONE – PETITIONER.

COSTS OF LITIGATION FOR THE BENEFIT OF ALL CREDITORS OF THE TOOHEY CORPORATION, AND MARGARET E. TOOHEY, BANKRUPT.

HUBERT F. LAUGHARN, RECEIVER IN EQUITY, FOR TOOHEY CORP. AND TRUSTEE FOR MARGARET E. TOOHEY, BANKRUPTCY.

DAN BOONE, TRUSTEES, AGENT.

ALL COSTS, ETC. PAID FOR BY DAN - BOONE. TO WIT:

CASE NO.	ACCOUNTS	TOTALS	CHARGE LABOR ALL	CHARGE
LOBDELL-	MARK ROBERTS CO.	1,793.84	304.64	614.20
"	"	"	875.00	
# 324342	Quiet Title Action	65.80	20.00	45.80
LAUGHARN # T. 42. C	McLeod v. Tooley	1,072.14	500.00 bnd	482.14
LAUGHARN # T. 42. C	Carmel properties	443.80	260.00	183.80

LAUGHARN #16976C. Tooy Bankruptcy	223.00	70.00	153.00
LAUGHARN 6/1 to 7/8/31 OKLAHOMA TRIP	563.65	220.00	343.65
LAUGHARN Nov/18 to 11/18/32 “	647.70	280.00	367.70
LAUGHARN Dec. 10 “ Jan 20/33 “	726.50	330.00	396.50
<hr/>			
TOTALS	5,536.43	1,679.64	2,586.79
		1,679.64	Charge Creditors
		1,270.00	Labor due Boone
		2,586.79	Costs & Attorneys
<hr/>			
	5,536.43	1,679.64	
		304.64	Chg. Mark Roberts, cost
		875.00	“ “ costs
		500.00	Credit Bond (can- celled)
<hr/>			
	5,536.43	1,679.64	

1,679.64

All Credits as
above

30

\$3856.79

DUE BOONE FOR LABOR AND
ALL COSTS ADVANCED

\$3856.79

The undersigned creditors, hereby agree that the above expenses incurred by DAN BOONE in the investigation, trips to Oklahoma, etc., may be repaid to him out of the first funds realized into the estate, and deducted pro-rata from the first dividends payable on our claims.

APPROVED FEBRUARY 20, 1933.

EDWIN J. MILLER - for claims
(for E. H. Martin and Mazie McLeod)

(CORPORATE SEAL)

APPROVED T. S. BARNARD PRESIDENT.
(Mark Roberts & Co. Inc.)

(CORPORATE SEAL)

APPROVED Benj. Westen PRESIDENT
(Equity Bldg. and Loan Asso.)

APPROVED _____

(For H. W. Ringle)

APPROVED J. C. ALDRICH

(J. C. Aldrich)

(ON THE BACK)

APPROVED H. B. Merly, Jr. Cr. Mgr.

(FILED)

(Peck and Hill Co.)

(Feb. 24 1933)

APPROVED _____

(at 45 min. past 3 o'clock)

(P. M.

(RUPERT B. TURNBULL, Referee)

(C. M. COMMINS, Clerk)

That on March 23, 1935, the Referee sent a notice to the creditors that there would be a meeting on April 2, 1935, at the office of the Referee, for the following purposes:

(Condensed statement)

1. To hear the trustee's report;
2. To hear application for fees;
3. For the trustee \$350.00;
4. For Mott, Vallee & Grant and Hughes, attorneys for petitioning creditors \$12,000.00, and 40% interest in the oil property;
5. And to DAN Boone for trustee's agent, \$1490.00;
6. To Dan Boone for \$1434.71 costs advanced;
7. To Dan Boone for \$3856.79 to be deducted from dividends of certain creditors in his petition on Exhibit "A".

RUPERT B. TURNBULL, Referee.

That on or about April 18, 1935, Mazie McLeod and Edwin J. Miller filed objections to the petition asking for subrogation; on May 29, 1935, said objectors filed amended objections to the making of said subrogation; which said amended objections, in condensed form, are as follows:

(United States Court caption omitted)

Mazie McLeod and Edwin J. Miller, as assignee of E. H. Martin, whose claim has been allowed in the sum of \$7500.00 principal, with interest, object to the allowance and subrogation in favor of Dan Boone of the pro rata

amount of their costs covering investigation and expenses of litigation, etc., for the following reasons:

1. There is no consideration for the subrogation agreement, and it is unenforceable.

2. That the contract for alleged subrogation was never delivered nor completed; that its delivery to Dan Boone was for the purpose of securing other signatures thereon, which were never obtained, and never became effective; it was agreed that the same would not be binding unless the other signatures were obtained; the paper should be cancelled.

3. A large part of the claim of \$3856.79 appears from the face of the claim to be for alleged costs and expenditures incurred before the bankruptcy proceeding, and has been adjudicated not to be a proper claim; and no sufficient consideration for said alleged subrogation agreement.

4. That by order of court, on April 9, 1935, this court allowed Dan Boone for services, as trustee's agent, \$520.00; and a further sum and refund of moneys and costs advanced in the administration of the estate in the sum of \$1434.71, making a total of \$1954.71; that said \$1954.71 was based upon the same claims and services and alleged expenditures and expenses as going to the making up in part of \$3856.79.

5. That the only consideration for the signing of the said subrogation was a promise on the part of Dan Boone that if Edwin J. Miller would sign for said two creditors that he, Dan Boone, would obtain the signatures of all the other creditors of the bankrupt estate of Margaret E. Tooley thereto; and if such signatures were not obtained that the document would not be binding; that said signa-

tures were never obtained, and the consideration has wholly failed.

6. That the alleged attorney's fees, forming a part of the \$3856.79 are not proper charges to be repaid to Dan Boone.

7. That the items making up the \$3856.79 are uncertain, unintelligible and ambiguous.

8. That the items making up the \$3856.79, and noted in said claim as \$1270.00 labor due, is included in other items of other claims allowed to Dan Boone.

9. That the items making up the \$3856.79, and listed as charged credits in the amount of \$1679.64 is not proper, is uncertain, ambiguous, unintelligible and improper.

10. That the claim for \$3856.79 is a duplication in part of claims already allowed.

11. That the subrogation agreement was presented by Dan Boone to Edwin J. Miller at his office when the said Miller was busy with other matters, and Boone represented to Miller that he spent a large amount of his own money, and wanted to be repaid out of the first moneys that were available; the said Miller merely glanced at the paper, and did not analyze it, nor inquire as to the basis of the several charges therein, and did not read all of the same; but inquired of the said Dan Boone if all the creditors were going to sign, including the claim of H. W. Ringle; Dan Boone represented that all were going to sign it, and that he, Dan Boone, represented almost all the creditors, and that all would sign. Said Miller replied that he had no authority from his client, Mazie McLeod, to sign it; but that if all the other creditors were

going to sign that he, the said Miller, would sign without authority from his client; and that if all the creditors did not sign the subrogation agreement it would not be binding on the creditors represented by said Miller; the said Dan Boone said that if all did not sign that it would not be binding; said Miller thereupon signed the same. That in a conversation within the last three weeks the said Dan Boone stated to the said Miller that the above was correct, and that Mr. Grant had promised to sign for the Ringle claim, and had not done so; that said Miller told the said Boone that he would not be bound thereby unless all creditors joined therein. That said Miller relied upon said statement, and would not have signed except for said promises; that all the creditors have not signed the same, and the said H. W. Ringle has not signed; and the undersigned notified the said Boone that he would not be bound thereby.

12. The said Boone, shortly after the commencement of the bankruptcy proceeding, offered said Miller the representation of the petitioners in the bankruptcy proceeding, which said Miller declined because he was attorney for Mazie McLeod.

That said Miller did not know there would ever be any claim for liability under said subrogation document, until March, 1935, when he received the notice from the referee. He therefore objects to the order of subrogation.

EDWIN J. MILLER

Attorney for Mazie McLeod and
Per Se.

That after the conclusion of said hearing on the subrogation, and under date of June 11, 1935, the Referee made an order of subrogation in words and figures as follows: (omitting caption)

ORDER SUBROGATING CLAIMS OF EDWIN J. MILLER, ASSIGNEE OF E. H. MARTIN, MAZIE McLEOD, MARK ROBERTS & CO., EQUITY BUILDING & LOAN ASSOCIATION, PECK & HILLS AND YOUNGER & FELLOWS, AND ANY AND ALL DIVIDENDS THEREON, TO CLAIM OF DAN BOONE IN THE AMOUNT OF \$3621.79.

WHEREAS, heretofore, on or about February 20, 1933, Dan Boone filed herein claim against the above estate in the sum of \$3856.79 on account of his services and expenditures in the protection of the assets of the above named bankrupt prior to bankruptcy and in the administration of the estate subsequent thereto, said claim bearing on its face the agreement of certain creditors of the above entitled estate that the said amount claimed by Dan Boone should be deducted pro rata from the first dividends payable on account of their claims herein; and

WHEREAS, the creditors so agreeing that dividends on their claims herein might be charged in favor of said Dan Boone to the extent of \$3856.79 are:

1. Edwin J. Miller, assignee of E. H. Martin
2. Mazie McLeod
3. Mark Roberts & Co.
4. Equity Building & Loan Association
5. Dan Boone, assignee of J. C. Aldrich
6. Dan Boone, assignee of Peck & Hills
7. Dan Boone, assignee of Younger & Fellows; and

WHEREAS, on the 15th day of April, 1935 notice was duly directed by the above entitled court to each of said creditors directing attention to their assignment to Dan Boone as aforesaid and notifying them that unless objections were filed within ten days from the date of said notice an order would be made subrogating their claims; and each of them, to the charge in favor of said Dan Boone, pro rata; and

WHEREAS, no objections to said subrogation were filed other than by Edwin J. Miller, assignee of E. H. Martin, and by Mazie McLeod; and

WHEREAS, the matter of the objections of said creditors to said subrogation came on regularly for hearing before the Honorable Rupert B. Turnbull, Referee in Bankruptcy, on the 4th day of June, 1935, said objecting parties appearing by their attorney, Edwin J. Miller, Esq., and at said times the referee heard evidence in support of and in opposition to said objections, and being now fully advised in the premises:

IT IS HEREBY ORDERED:

That the claims herein of the following named creditors, to-wit:

Edwin J. Miller, assignee of E. H. Martin

Mazie McLeod

Mark Roberts & Co., a corporation

Equity Building & Loan Association, a corporation

Dan Boone, assignee of J. C. Aldrich

Dan Boone, assignee of Peck & Hills; and

Dan Boone, assignee of Younger & Fellows, be, and hereby are, subrogated and subjected to a charge and assignment in favor of Dan Boone in the aggregate amount of \$3621.79 (being the aforesaid \$3856.79 less \$235.00 heretofore paid to said Dan Boone), and the trustee herein is hereby ordered and directed to pro rate said sum of \$3621.79 against said creditors, Edwin J. Miller, assignee of E. H. Martin, Mazie McLeod, Mark Roberts & Co., Equity Building & Loan Association, Dan Boone, assignee of J. C. Aldrich, Dan Boone, assignee of Peck & Hills, and Dan Boone, assignee of Younger & Fellows, in proportion as the claim of each, allowed or hereafter allowed, bears to the aggregate of their claims, and to deduct said pro rata from the first dividends accruing herein to said creditors, and each of them, and to pay the same to the aforesaid Dan Boone until said amount of \$3621.79 has been paid in full.

Dated: Los Angeles, California, June 11, 1935.

RUPERT B. TURNBULL
(Rupert B. Turnbull)
Referee in Bankruptcy

STATEMENT OF VERBAL EVIDENCE IN
NARRATIVE FORM.

HEARING ON APRIL 30, 1935.

Be it remembered that upon a hearing before the Hon. Rupert B. Turnbull, Referee, in the Matter of Margaret E. Tooley, Bankrupt, relating to the subrogation of Dan Boone to the claims of Mazie McLeod and Edwin J. Miller, there appeared for the petitioner Dan Boone attorneys Kenneth E. Grant, of the firm of Mott, Vallee & Grant, and Gilbert B. Hughes. There appeared for the objectors, Edwin J. Miller.

The following proceedings occurred on April 30, 1935, at ten o'clock A. M.:

It was ordered by the Referee that the matter could not be heard on this date, and that he would set a new date and notify the parties by telephone.

HEARING ON MAY 9, 1935.

MR. GRANT: May I take up first two other matters? I would like first to take up the matter of the subrogation of Dan Boone's claim of \$3800.00 on account of monies advanced by him in the administration of this estate and which certain of the creditors agreed should be charged against their dividends. Notices have gone out and the only objections that have been filed by those creditors who signed the instrument and agreed that they would stand their prorata—

THE REFEREE: If they have signed the instrument, that is too bad for them. I am not going to take it away from Mr. Boone if they gave it to him.

MR. GRANT: The only one that has objected is Mr. Miller.

THE REFEREE: Is he here?

MR. GRANT: No, but he himself personally signed the instrument

THE REFEREE: That is disposed of right now. If he wrote his own ticket I can't change it and don't intend to. That is on the calendar regularly here today?

MR. GRANT: Yes.

HEARING ON MAY 14, 1935; TWO O'CLOCK P. M.
SESSION.

THE REFEREE: Margaret E. Tooley. Mr. Miller asked me to continue this until he could get here. He is here now. Objection to the claim of Dan Boone and objection to the claim of—allowance of a subrogation of Dan Boone in the prorata share of the claim of Edwin J. Miller, E. H. Martin, attorney for Mazie McLeod. The statement has been made in your absence, Mr. Miller, that your signature is the original signature on the Boone contract by which you consent that certain expenses be taken out of your share of the dividends.

MR. MILLER: Well, that oughtn't to have been made in my absence.

THE REFEREE: I am repeating it to you, that that was your signature on that contract.

MR. MILLER: I signed some paper, yes, I have no doubt.

THE REFEREE: Then what objection have you got now to the subrogation of it?

MR. MILLER: The objection is this, that I signed that paper with the understanding that all the creditors were consenting to the same thing.

THE REFEREE: IT doesn't say so.

MR. MILLER: Perhaps it doesn't. I didn't even read it at the time.

THE REFEREE: I can have a layman tell me that but I didn't know lawyers ever did it.

MR. MILLER: Lawyers are worse than laymen, and of course I wouldn't have consented out of certain claims—

THE REFEREE: I don't know what you would have done but I know you did it. There it is. You wrote your own ticket, didn't you?

MR. MILLER: I know—

THE REFEREE: I didn't write it.

MR. MILLER: Sure, I didn't ask anybody else to write my name for me.

THE REFEREE: You made a deal with Mr. Boone that if he put up a certain amount of money you fellows would pay it back. He has now got the money and now you say you didn't read the contract. Is that it? I'm not trying to make fun of you, Mr. Miller. I am laughing at you because lawyers are the worst business men in the world.

MR. MILLER: Another lawyer came into my office last Saturday and got ten dollars and said he would pay it back yesterday and I haven't seen him yet.

MR. GRANT: That is brotherly love.

THE REFEREE: We won't charge that to maladministration.

MR. MILLER: As I said, if Your Honor please, I don't think Mr. Boone ought to expect that this be paid out of one claim to the benefit of other claims. It wasn't our understanding that it would or should be done, and

I have the distinct understanding with him, my friend Grant and his associate here—

MR. GRANT: Not with me. I don't know anything about it.

MR. MILLER: I didn't have it with you. I don't charge you with anything wrong here but I did have the understanding that the other claimants would consent and were consenting the same as I did and I was just good enough to sign before the others did, that is all there is to it.

THE REFEREE: That is not what it says. It says that the undersigned creditors will pay out of their share the amount of money he put up. You are not bound to pay him the money until he gets it. He did put up some money, we all know that.

MR. MILLER: That has been a long time ago, a year ago. I am perfectly friendly to Mr. Boone's claim but I don't want to pay him out of my client's money without the others. It was my understanding they were all doing it and that is the reason I signed it.

THE REFEREE: That is not what your contract calls for, though. You are asking me to read something into the contract that you didn't put there.

MR. MILLER: I sure had no authority from anybody I represented and didn't consult anybody about it and didn't think I was prejudicing anybody's claim other than—

THE REFEREE: Of course, part of this expense he is getting back direct from the estate.

MR. MILLER: I have no objection to him getting it all back that way.

THE REFEREE: But part of it I can't do that way.

(Testimony of Edwin J. Miller)

MR. MILLER: What part of it is it you want me to pay?

THE REFEREE: I don't want you to pay him anything. I have a contract directing my trustee to pay him certain money and this is an order to show cause why we shouldn't pay it to him.

MR. MILLER: I have told you why, and if necessary I will swear to it, and he told me he would get all of them, and Mr. Grant was to sign the same as I did.

THE REFEREE: If he had gotten all of them he would have gotten all his money, but that is why he won't get but part of it. Are we in any better position to proceed now than we were last week on these objections?

MR. GRANT: I think so.

The court thereupon adjourned the hearing until May 27, 1935.

EDWIN J. MILLER,

BEING DULY SWORN, TESTIFIED AS FOLLOWS:

MR. MILLER: I am objecting to Mr. Boone's claim—

THE REFEREE: Right now this is the question of subrogation and you have heretofore testified and also admitted that the subrogation agreement bears your signature but you didn't read it.

MR. MILLER: Well, if I read it—I signed it on this statement by Mr. Boone. There is no question about it—

(Testimony of Edwin J. Miller)

THE REFEREE: I don't think you have any right to change that contract by reason of any words in it. Do you think so, counsel?

MR. GRANT: No.

THE REFEREE: I make that objection because you are acting as your own counsel. Here is an instrument that recites on its face that he is putting up certain money and you consent that a certain amount of your dividend be used to pay him back. Now, do you think you can attack that by saying something else should have been in that agreement, after he has expended his money?

MR. MILLER: No, but the statements that were made induced the signing of it.

THE REFEREE: Go ahead and counsel can protect himself by the necessary objections, if he thinks he has any. I won't raise any more.

MR. MILLER: Mr. Boone came to me when I was busy on other matters, and my recollection is—

MR. GRANT: IS this the conversation at the time of the signing of this instrument?

MR. MILLER: Yes.

MR. GRANT: I object to it.

THE REFEREE: Sustained, especially in view of the fact that the evidence shows that Mr. Boone relied on it and paid out his money.

MR. MILLER: That is not a fact, Your Honor.

THE REFEREE: The evidence shows he did. He advanced a lot of money.

MR. MILLER: That is not my understanding of it at all. The money was paid out before, Your Honor, and the representation that induced me to sign it—

MR. GRANT: Just a moment, please.

(Testimony of Edwin J. Miller)

THE REFEREE: I have sustained the objection on the ground it is a violation of the parol evidence rule.

MR. MILLER: Will you let me produce authority on that, Judge?

THE REFEREE: I think it is very plain that if I write you a promissory note today in which I say ten days after date I promise to pay Mr. Miller a thousand dollars, after the ten days is up I can't come back and say I should have put the word "not" in here.

MR. MILLER: But I want to produce authority. That is fair.

THE REFEREE: It may be fair according to your idea. We heard this whole matter once and listened to your argument and I decided the thing against you and this morning you tell me you didn't understand I was deciding it and I have reopened it. I want the evidence and the argument now.

MR. MILLER: I am thoroughly convinced I am correct on this, and there is no rights of innocent third parties here. It is the original parties, and it is always competent then to show representations under which it is signed.

THE REFEREE: Not in the absence of an ambiguity or fraud, and there is no ambiguity under this contract and no fraud alleged and there never has been any alleged.

(Testimony of Edwin J. Miller)

MR. MILLER: That is what I am trying to tell you now.

MR. GRANT: I think it is very much of a—

THE REFEREE: There is no fraud in issue here.

MR. MILLER: Yes, I don't call it fraud but—

THE REFEREE: You don't set it up here.

MR. MILLER: I set it up in the objection, that it was obtained under misrepresentation that all creditors' claims would sign.

THE REFEREE: It must be false and known to be false and must have been used as a matter of inducement and must have been relied upon and you must have believed it and you must have acted upon it to your detriment.

MR. MILLER: I propose to show that if you will let me.

THE REFEREE: Where is the pleading that will permit any such proof?

MR. MILLER: IF the objections are not as full as you want them I will re-draw them.

THE REFEREE: I think I am being imposed on but I won't take any snap judgment. Now, you say there is a lot of proof you want to put in that is not in the pleadings. Before you—whatever you put in your pleadings you will have to stand by. I still think you are thinking up a lot of new ones.

MR. MILLER: I am not changing here at all. I am not changing my position at all.

THE REFEREE: I will give you a week. I think you will have to directly charge Mr. Boone with some-

(Testimony of Edwin J. Miller)

thing that will allow me to waive the parol evidence rule. If I sue you on a promissory note and say, here is the note and you haven't paid it, can you come in and show anything you want?

MR. MILLER: I can show the circumstances under which it is signed. If it is wrongfully obtained, I can always show it.

MR. GRANT: He made the first statement in court that he had no doubt Mr. Boone was entitled to that money.

MR. MILLER: I am not objecting to his claim, and never have. I have always been friendly with Dan Boone and want him to have what is right here but I don't want flesh made out of one and fowl out of the other.

THE REFEREE: I hold no brief for Mr. Boone. He has made more trouble in this case than all the rest of the creditors put together.

MR. GRANT: But he got us a couple of oil wells.

THE REFEREE: But I still have to be as patient as I can. I want it in a pleading.

MR. MILLER: You can give me a week to file that and then I will—it will go over until June 4th;

THE REFEREE: June 4 at two o'clock.

MR. MILLER: That is alright, Your Honor.

THE REFEREE: Will you file that pleading so counsel will be appraised of it at least two days before the hearing?

MR. MILLER: Yes, I can do that your Honor.

(Testimony of Edwin J. Miller)

HEARING ON JUNE 4, 1935.

TESTIMONY OF EDWIN J. MILLER.

Request is made for the subrogation agreement. It starts out thirty-eight hundred and some odd dollars—that was presented to me at that time with the statement Mr. Boone had been out his money a long time, and there would be money coming from the estate, and he wanted to be paid first. I wanted to get the consent of all other creditors. I asked if the other creditors were going to consent. He said yes. I said I am willing for you to have your money first. I didn't go over the matter in detail. I asked if all the others were going to sign, and he said they were. I said, "If they are I will too."

THE REFEREE: You did have authority because you had a power of attorney?

MR. MILLER: For myself it was different, but for Mrs. McCloud—

THE REFEREE: Your power of attorney for Mrs. McCloud gave you that right?

MR. MILLER: I don't think that power of attorney would—

MR. HUGHES: There is a letter there advising him to use his own judgment any way he sees fit.

Mr. Hughes offers the letter in evidence.

MR. MILLER: It is the signature of Mr. Burns, I take it.

MR. HUGHES: He is the associate counsel in Missouri?

MR. MILLER: Yes.

THE REFEREE: Trustee's Exhibit A.

(Testimony of Edwin J. Miller)

MR. MILLER: Then I told Mr. Boone—asked him if they were all going to sign, and especially mentioned if the creditor H. W. Ranger (Ringle) was going to sign. He said Ranger (Ringle) was going to sign, and all of the others. I said, “If they are all going to sign, I will sign, but if they don’t sign, it isn’t going to be binding on me.” He said, “No.” So I handed it back to him for the purpose of getting *over* signatures, and in the meantime it was not binding on me. It was never delivered, in fact, and was not to be binding. There was no consideration. That is about all the statement I wanted to make. I was sworn on a former occasion.

THE REFEREE: I think I have your side of it pretty well.

MR. HUGHES: Do you wish some cross examination, your Honor?

THE REFEREE: I will say frankly, I don’t think Mr. Miller has changed my idea at all. I think I am of the same opinion still.

MR. MILLER: In that circumstance, I would like to present some stipulations.

THE REFEREE: You don’t need stipulations. I am finding against you on the fact. You wrote your own ticket, and here it is. I am not going to change it after the money comes in.

Q BY MR. HUGHES: You represented Mr. Boone at the start of the receivership proceedings, did you not?

A Before bankruptcy. There was a receivership proceeding in the Federal Court, and I say I represented Mr. Boone—Mrs. McCloud was the client, but Boone—

Q He paid you your fees, did he not, Mr. Miller?

(Testimony of Edwin J. Miller)

A He came to me to represent her, and I did represent her at his request, but by first obtaining a direct contact with her in Brookfield, Missouri, by long distance telephone.

Q At that time Mr. Boone agreed to advance all costs in the case, to be repaid by Mrs. McCloud, did he not?

THE REFEREE: I decided this case once, and just because Mr. Miller thought he didn't have an opportunity to present all of his case—this is the third or fourth time—I have heard his side of the story and still think—he wrote his own ticket. I don't feel I ought to change it. If he put into that contract "Not to be filed if the other people didn't sign it", but he didn't. Personally I think it is going to pay you one hundred cents on the dollar before you get through, Mr. Miller.

MR. MILLER: I was going to say that the items that agreement purports to cover were incurred before he ever came to me and not on my recommendation, and therefore, there was no consideration.

THE REFEREE: I have that in mind.

MR. MILLER: Then, there is a statutory provision about conditional delivery. I don't know whether your Honor has that statute in mind, but—

THE REFEREE: No. I have continued this matter three times to get your story, and I am satisfied. If I am wrong, I am 100% wrong, Mr. Miller.

MR. MILLER: I am sorry, but I feel you are wrong.

THE REFEREE: Don't worry; more than half of the attorneys think I am wrong.

MR. MILLER: I would like the record to show an exception. I feel there was no consideration, and under the statute, both of those were complete defenses.

(Testimony of Dan Boone)

THE REFEREE: Do you want to put any rebuttal in?

MR. HUGHES: In view of the fact that he is contemplating a review, I would like to put Mr. Boone on the stand.

DAN BOONE,

BEING FIRST DULY SWORN, TESTIFIED:

I did have occasion to submit the subrogation agreement to Mr. Miller to sign. In the beginning, when I got authority from Mrs. McLeod, through her attorney, to employ an attorney here, I got in touch with Mr. Miller and he agreed that this money would be returned to me. Over a period of years all moneys necessary I advanced, and I paid what was necessary. When the time came for filing of notice of Account against the Tooley Estate in Bankruptcy, I asked Mr. Miller how would I proceed filing claims against the estate for costs. He said "I advise you to see Mr. Laugharn, he is more familiar with those matters." Mr. Laugharn said "I am satisfied these moneys were actually spent. I suggest you write out an agreement like this"—

THE REFEREE: And in the meantime Mr. Laugharn told you he thought some of those claims were prior claims—

A Yes. He said he could only handle those up to bankruptcy.

THE REFEREE: I so ruled here.

A. So I came back with an agreement along the lines Mr. Laugharn asked me to prepare, or told me about. I talked to Mr. Miller and he checked it over and said

(Testimony of Dan Boone)

“I know all about it. Give it to me and I will sign it.”
I made no representation about other creditors signing.
I went to Mr. Grant—

THE REFEREE: Did you tell Mr. Miller about it?

A Yes, I told Mr. Miller I would see Mr. Grant and see if I could get his clients to sign. He said his clients were in Colorado and he would take the matter up. He never signed, but all of the rest signed willingly.

Q Did you ever make a representation to Mr. Miller that the agreement which he signed, was contingent upon everyone else signing?

A I certainly did not.

Q He had represented you all during this whole Tooley matter?

A Yes.

MR. HUGHES: That is all.

CROSS EXAMINATION.

BY MR. MILLER:

Q I wasn't your attorney then in the matter, was I?

A You were my attorney.

It is true that after filing the bankruptcy proceeding against Tooley that I wanted to employ Mr. Miller to represent me and represent the petitioning creditors. It is further true that on account of the fact that Mr. Miller represented Mrs. McLeod that he told me that he could not represent me. He did represent me in other matters. Messrs. Grant and Hughes represented the petitioning creditors, and I was one of them. They have represented me ever since. They are attorneys for the petitioning creditors in general, not me.

(Testimony of Dan Boone)

THE REFEREE: I will take judicial notice of the fact they represented petitioning creditors, but this relates to money advanced before bankruptcy.

Mr. Miller represented me in the Tooley matter, but that was before bankruptcy. I came to Mr. Miller before the bankruptcy, a year or so, to represent Mrs. McLeod, and he refused to represent her except on a long distance telephone call from her personal representative in Brookfield, Missouri. That was before the receivership was filed in the Federal Court.

Q Didn't you claim he agreed to reimburse you?

A I am claiming you agreed to reimburse me and did not.

Q Don't you claim he agreed to reimburse you?

A No, my agreement was with you.

Q Didn't you file a claim with him?

A No, just checking the items.

Q And didn't he send that to me for checking over as to whether it was right or wrong?

A No, I brought it over to your office. If you have a copy, it is all right. I don't know anything about sending it from Brookfield, Missouri. I sent you a telegram. I prepared the alleged subrogation myself at my home. I wrote the names thereon with a typewriter that *are* there. I wrote the name W. H. Ringle, I did that to show he was one of the creditors. I did not expect all the creditors to sign it, I wanted them to. I tried to get the different ones to sign it, and that is what I said to you that I would get them to sign if possible, but there was a question in my mind about a few of them. I represented twenty-six or twenty-seven creditors. I did not say that Ringle and Grant would sign. Mr. Burns in

(Testimony of Dan Boone)

Missouri refused to recognize my claim, or pay any of it, then I came and talked to you about it last Spring. There was a dispute between you and me about it, not between Mrs. McLeod and me.

Q Isn't it true I said to you on that occasion there was a dispute between you and Mrs. McCloud—

A What—

Q Just a moment. I am not through with my question. And Mrs. McCloud had refused to recognize any expenses you paid out?

A What you did say to me was "Mrs. McCloud is not going to recognize any of your claims after four or five years."

I told Mrs. McLeod that I believed she would shortly realize some of the moneys she lost. I remember when the preferred claim of \$3250.00 was filed. I was to see you often. I helped settle her claim. I don't say you did or didn't tell me that you had a letter from Mr. Burns with a copy of the account I left with him. We had conversation. I have a copy of that account myself. You probably showed me that account in your office. I am not positive. This is my signature too.

THE REFEREE: Miller-McCloud Exhibit No. 1.

(Said Exhibit No. 1 is the receipt signed by Dan Boone, which is in words and figures as follows:)

I sent you the telegram from Brookfield, Missouri. I had a conversation with Mrs. McLeod and Mr. Burns. Telegram offered in evidence as Miller-McCloud No. 2 exhibit.

(Testimony of Dan Boone)

Q Are there any charges in that document, Miller-McCloud No. 3 that you left with Mrs. McCloud or Mr. Burns in Brookfield, Mo., that are duplications?

A I don't recall.

THE REFEREE: You have been trying to do all the talking in this case. Don't get the idea we are joking around here, Mr. Boone. We have stricken several of your claims already. Now, I find another of \$185. which is duplicated, according to your own testimony in the last five minutes.

THE REFEREE: Will you make a note, Mr. Hughes, of another \$185. to be taken out of his claim?

MR. MILLER: Q You made this subrogation agreement, you say, yourself, and it shows here a total of \$3,856.79. That was for expenses incurred before the bankruptcy proceeding?

A Yes, before bankruptcy.

Q Those were all incurred before this subrogation agreement was prepared by you or presented to me?

THE REFEREE: At the time that agreement was signed, you had already paid out the money?

A Yes, sir.

BY MR. MILLER: I want to state that I have at no time represented Mr. Boone in connection with the bankruptcy proceeding of Margaret E. Tooley. He offered that representation to me, but I told him I represented another party and there would be a direct conflict between her claim and that bankruptcy proceeding, and I could not accept because she had a mortgage lien on this property in Oklahoma, and if she were declared a bankrupt it might tend to relegate (militate) against the lien.

(Testimony of Dan Boone)

THE REFEREE: There was a diversity of interest there.

MR. MILLER: Yes. Mr. Boone was apparently displeased about it. When he was in Brookfield, Mo. I received that telegram.

THE REFEREE: He admitted sending it.

MR. MILLER: When Mr. Boone came back from Oklahoma I showed him that statement and told him I had received word from Mr. Burns that he would not allow any item on it. I said to him "I don't want (owe) a cent. I am under no obligation to you at all, but it happens you are a friend of mine and I represent Mrs. McCleod. There is a conflict between these two people. You put up this \$100 attorney fee and some expenses and I have got or will get some fees on this preferred claim, and rather than see you lose it, I am going to pay it back. There was an item of \$150. in that claim—

THE REFEREE: I have that before me.

MR. MILLER: —that I never sent Mr. Boone a bill for. I said to him, "That can just go out of there; I will waive that. You have paid me \$100 and I am going to pay it back." We sat right there and I called the girl in and said "I will dictate to the girl a receipt you can sign, and"—

THE REFEREE: Did you intend to have this instrument of March 19th—it wasn't your intention to wipe out the subrogation agreement?

MR. MILLER: I didn't know anybody was claiming under it.

(Testimony of Dan Boone)

THE REFEREE: You did not put in this receipt of March 19 anything about you and Boone. This refers only to \$85 expense in the Tooley-McCloud matter handled by Miller and \$150 attorney fees in said litigation.

MR. MILLER: That is right. I did that because I didn't want to see Mr. Boone lose it because he couldn't get it from back there. He agreed with it.

THE REFEREE: That may be so, but this agreement, Miller-McCloud No. 1, has nothing to do with the subrogation agreement.

MR. MILLER: Yes, but I didn't at any time promise to repay Mr. Boone the expenses or promise to return attorney fees, except on that one occasion I returned them. I got the story from Mr. Burns at Booneville, Mo.

THE REFEREE: Do you know Mr. Burns?

MR. MILLER: No, but I understood from Mr. Boone he represented Mrs. McCloud and I felt I could not go into Court without direct authority.

CROSS-EXAMINATION

I am the owner of the Martin claim now; Martin has no further interest in it.

MR. MILLER: I would like, your Honor, the privilege of submitting authorities, because I am satisfied your Honor has in mind—

THE REFEREE: I am satisfied the facts against you, Mr. Miller. You signed a written instrument. You are over 21 years of age and practicing law. I am going to take it for just what it is on its face.

MR. MILLER: If your Honor will be good enough to look at the authorities. In the first place, the California statute makes a condition of delivery—

THE REFEREE: I am finding there wasn't a conditional delivery. I can't find there was a conditional delivery, according to the wording of the instrument. It doesn't say it is conditioned upon everybody signing it, and I can't find that that is what happened. The testimony is—Mr. Boone said he came to you and brought the claim to you and costs were advanced at your special instance and request.

MR. MILLER: That is not true.

MR. HUGHES: Did you advance any of them, Mr. Miller?

MR. MILLER: No, I did not.

THE REFEREE: I think in view of the fact that this case is going to pay 100 cents on the dollar, or almost 100 cents on the dollar—

MR. MILLER: I am willing that Mr. Boone should be the first man paid, but I want them all to be alike.

THE REFEREE: That isn't what your agreement states. The agreement doesn't say that.

MR. MILLER: I acknowledge it doesn't.

THE REFEREE: So I am in that position, and I think under all the facts and circumstances I can't find—proof is upon you to change its construction and you haven't done it, Mr. Miller.

MR. MILLER: I think I am right on the law about it.

THE REFEREE: I don't think there is any law to apply to it. Irrespective of whom I believe, I have got to hold the burden of proof hasn't been carried by you to change the terms of a written instrument.

THE REFEREE: I am going to hold that unless you are successful in your review—you have ten days after the order is filed to take your review—I am going to find Mr. Boone did advance a certain amount of money and you knew about it being advanced, and—

Mr. MILLER: That isn't the point I was inquiring about—the effect of the subrogation agreement. Suppose he gets the money out of the creditors whose names appear on there? Then what happens after that? Will they be reimbursed from some other source?

THE REFEREE: If you did a foolish thing in signing, I can't help that.

MR. MILLER: I did do a foolish thing.

THE REFEREE: Under the circumstances I can't find there was any agreement existing between you which is not in writing. I don't think any court would find that way. That is your ticket and you wrote it.

MR. MILLER: Mrs. McLeod doesn't know it yet. I never advised her because I didn't think—

THE REFEREE: I have before me the power of attorney, haven't I?

MR. MILLER: That went to the allowance of her claim, not the giving of it away.

THE REFEREE: I can't agree with you.

The foregoing is appellants' condensed statement, in narrative form, of the evidence introduced upon the trial made in pursuance to Equity Rule 75, paragraph "B" thereof, and lodged in the clerk's office for examination of defendant, as provided by said Rule.

Edwin J. Miller

Attorney for Appellants.

The foregoing narrative statement of the evidence is hereby allowed and approved, and the same is hereby ordered filed as a statement of the evidence to be included in the record on appeal in the above styled cause, as provided in paragraph "B" of Equity Rule 75.

Dated: Dec. 4, 1935.

Geo. Cosgrave

Judge of the District Court.

Dec. 4, 1935

Approved as Statement of Evidence only.

K. E. Grant.

[Endorsed]: Received copy of the within Condensed statement of evidence this 30th day of October, 1935. Mott, Vallee & Grant & Gilbert B. Hughes. By K. E. Grant, attorneys for appellees. Lodged Oct. 30, 1935 at 3:10 P. M. R. S. Zimmerman, Clerk By F. Betz, Deputy Clerk. Filed R. S. Zimmerman, Clerk at 35 min. past 2 o'clock Dec. 4, 1935 P. M. By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PETITION OF MAZIE McLEOD AND EDWIN J.
MILLER FOR ORDER ALLOWING APPEAL.

Mazie McLeod and Edwin J. Miller, petitioners in the petition for review, feeling themselves aggrieved by the final judgment and order made by this court on said petition for review in this said matter on or about September 6, 1935, come now and petition this court for an order allowing them to prosecute an appeal from said final order and judgment, in favor of Dan Boone, said order denying the petition of these petitioners for review, to the United States Circuit Court of *Appeal*, for the Ninth Circuit, under and pursuant to law in that behalf made and provided; and also that an order be made fixing the amount of the security which the petitioners shall give and furnish, and when such security is given and furnished that all further proceedings in this court be suspended and stayed until the final determination of appeal by the United States Circuit Court of *Appeal*, for the Ninth Circuit.

Dated: September 23, 1935.

MAZIE McLEOD and
EDWIN J. MILLER,

By Edwin J. Miller

Attorney for Appellants.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 27 min. past 2 o'clock Sep 23, 1935 P M By L. Wayne Thomas, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION.

In the matter of)	
)	
MARGARET E. TOOHEY,	)	In Bankruptcy
	)	No. 16976-C
	)	ASSIGNMENT OF
	)	ERRORS.
)	
Bankrupt.)	

The appellants, Mazie McLeod and Edwin J. Miller, hereby present the following assignment of errors:

1. The court erred in holding that the Referee and the District Court had jurisdiction to hear and determine the controversy between the creditors of the bankrupt estate.

2. The court erred in overruling and denying appellants' petition for review and reversal of the findings, order and judgment of the Referee.

3. The court erred in confirming the Referee's order of subrogation.

4. The court erred in sustaining the petition for subrogation filed by Dan Boone; and erred in denying the petition for review.

5. The court erred in holding that the alleged subrogation agreement was not without consideration and not void.

6. The court erred in refusing to hold that the claim of Dan Boone of \$3856.79 was a duplication of other claims already paid, and was fraudulent.

7. The court erred in holding that the alleged subrogation agreement is an assignment; is a subrogation agreement; and was not null and void.

8. The court erred in refusing to hold that the petition of Dan Boone, and the order of the Referee based thereon, was an attempt to enforce an uncompleted gift.

9. The court erred in upholding the order of the Referee finding for Dan Boone without any evidence of the merits of his claim.

10. The court erred in sustaining the order of the referee allowing the claim and alleged subrogation without support in the record.

11. The court erred in refusing to hold that Mazie McLeod had not signed, and had not authorized anyone to sign for her the subrogation agreement.

12. The court erred in upholding the order of the referee to the effect that there was a power of attorney authorizing the signature of Mazie McLeod, and in refusing to hold that said order was entirely without support in the evidence.

13. The court erred in holding liability against Mazie McLeod.

14. The court erred in holding that where the agent acts not for the benefit of the principal, but contrary

thereto, that the agent can charge the principal for such acts.

15. The court erred in holding that the authority of an attorney authorizes the giving away of the estate.

16. The court erred in refusing to hold that the burden of proof was on Dan Boone to establish agency of Mazie McLeod.

17. The court erred in failing to find that Dan Boone's claims against said estate exceeded \$44,000.00; and that his services and expenses were done in his own behalf.

18. The court erred in affirming the referee's order, and denying the petition for review of petitioners.

Dated: September 23, 1935.

MAZIE McLEOD and
EDWIN J. MILLER,

By Edwin J. Miller

Attorney, and in Pro Per.

[Endorsed]: Filed R. S. Zimmerman, Clerk, at 28 min. past 2 o'clock, Sep 23, 1935 P M By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING APPEAL AND FIXING
BOND.

Now on this 23rd day of September, 1935, it appearing to the court that Mazie McLeod and Edwin J. Miller have filed a petition for appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, and have prayed for an order fixing the amount of security which shall be given by the said appellants, and for an order of the court that the proceedings in this court be stayed until the final determination of said appeal; and the court being fully advised,

IT IS HEREBY ORDERED:

That the appeal is allowed as prayed, and that the appellants shall furnish an appeal bond in the penal sum of \$250.00, and that when the same is filed and approved that all further proceedings in this court be stayed until the final determination of said appeal.

Dated: September 23, 1935.

Geo. Cosgrave
JUDGE.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 27 min past 2 o'clock, Sep. 23, 1935, P M By L. Wayne Thomas, Deputy Clerk.

COST BOND ON APPEAL

Kow all Men by These Presents

That we, Edwin J. Miller and Mazie McLeod, as principals and, as Sureties are held and firmly bound unto appellees, Dan Boone and Hubert F. Laugharn, as Trustee, in the full and just sum of Two hundred Fifty (\$250.00) - - - - - Dollars cash to be paid to the said appellees, Dan Boone and Hubert F. Laugharn, as trustee, certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourth day of October, in the year of our Lord One Thousand Nine Hundred and thirty-five.

WHEREAS, lately at the District Court of the United States for the Southern District of California, Central Division, in a suit depending in said Court, In the Matter of Edwin J. Miller and of the Estate of Margaret E. Tooley, Bankrupt, Mazie McLeod, petitioners, v. Dan Boone and Hubert F. Laugharn, Trustee, a Judgment was rendered against the said Edwin J. Miller and Mazie McLeod, denying the petition for review of the order of Referee Turnbull, for subrogation, and the said Edwin J. Miller and Mazie McLeod having obtained from said Court an order granting leave to appeal to the

United States *District* Court, of Appeals for the Ninth District, to reverse the Judgment in the aforesaid suit, and a Citation directed to the said Dan Boone and Hubert F. Laugharn, as trustee, citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, on the 23rd day of October, 1935.

Now, the condition of the above obligation is such, that if the said Edwin J. Miller and Mazie McLeod shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their said plea good, then the above obligation to be void; else to remain in full force and virtue.

Acknowledged before me the day and year first above written.

Mazie McLeod by
Edwin J. Miller Atty
Edwin J. Miller [Seal]
Principals.

124 West Sixth Street
Los Angeles, California.

Cash \$250 Security

UNITED STATES OF AMERICA }
 SOUTHERN DISTRICT OF CALIFORNIA } ss:
 COUNTY OF Los Angeles }

Edwin J. Miller being duly sworn, says that he is the owner of the sum of Two hundred Fifty Dollars (\$250.00) *Dollars*, deposited this day with the Clerk as security on the within bond.

Subscribed and sworn to before me, this 4 day of October A. D. 1935.

Edwin J. Miller
 124 West Sixth Street, Los Angeles, Cal.
 (Address)

R. S. Zimmerman, Clerk U. S. District Court, Southern District of California By Robert P. Simpson, Deputy
 [Seal]

[Endorsed]: Filed R. S. Zimmerman Clerk at 6 min. past 3 o'clock Oct. 4, 1935 P. M. By L Wayne Thomas, Deputy Clerk.

Form of bond and sufficiency of sureties approved.
 R. S. Zimmerman, Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER.

(Appeal by Mazie McLeod and Edwin J. Miller from
Order of Subrogation.)

BEFORE THE HON. GEORGE COSGRAVE,
JUDGE:

Whereas, in the above entitled appeal, the appellants filed with the clerk of this court a praecipe for the making up of the record for the appeal, said praecipe having been filed on or about December 5, 1935, which said praecipe was and is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

In the Matter of)	
)	
MARGARET E. TOOHEY,	)	In Bankruptcy
	)	No. 16976-C
Bankrupt.	)	PRAECIPE
)	
)	

TO THE CLERK OF SAID COURT:

Please prepare and transmit to the clerk of the United States Circuit Court, for the Ninth Circuit, a transcript of the record upon the appeal taken by Mazie McLeod and Edwin J. Miller from the order confirming the Referee's order of subrogation; and overruling and denying the petition for review, which said order appealed from was dated

on or about September 6, 1935, and include therein the following documents:

1. The petition to have Margaret E. Tooley adjudged an involuntary bankrupt; and the order making the adjudication.

2. A statement of all claims, and all claims filed against said estate.

3. The petition of Dan Boone filed March 13, 1935.

4. The petition of Dan Boone filed March 22, 1935.

5. The petition for subrogation.

6. Amended objections to subrogation.

7. Order of subrogation.

8. Petition for review of subrogation.

9. Certificate of review.

10. Minute order of Judge Cosgrave made on or about September 6, 1935.

11. Petition for an appeal to the Circuit Court of *Appeal*, and Order allowing same.

12. Assignment of errors.

13. Citation on appeal, with proof of service.

14. Cost bond on appeal.

15. Statement of evidence, settled, signed and filed December 4, 1935.

16. Order of Court striking out portions of statement of evidence, and proposed amendments to statement of evidence.

17. Orders of court extending time for settling statement of evidence and filing transcript in Circuit Court of *Appeal*.

18. The order of Judge Cosgrave on Referee to certify certain documents to this Court, to be included in the transcript on appeal, dated September 23, 1935.

19. Your customary form of certificate of transcript.
Dated: December 5, 1935.

Edwin J. Miller
Attorney for appellants.

WHEREAS, a copy of said praecipe was served on the attorneys for appellees on or about December 5, 1935; and whereas within ten days thereafter, to-wit, December 11, 1935, the attorneys for the appellees served on counsel for appellants and filed a notice that they would on Monday, December 16, 1935, at the hour of two o'clock P. M., or as soon thereafter as counsel could be heard, move to exclude certain documents from the record specified in the praecipe, which said notice and motion were and are in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

In the Matter of)	
MARGARET E. TOOHEY,)	
	)	Bankrupt.
)	
_____)	
MAZIE McLEOD and	)	No. 16976-C
EDWIN J. MILLER,)	
	)	N O T I C E
Appellants,)	
)	
vs.)	
)	
DAN BOONE, and)	
HUBERT F. LAUGHARN,)	
Trustee,)	
	)	Appellees.
)	

TO MAZIE McLEOD AND EDWIN J. MILLER,
APPELLANTS IN THE ABOVE ENTITLED
CAUSE, AND TO EDWIN J. MILLER, ESQ.,
THEIR ATTORNEY:

You, and each of you, will please take notice that DAN
BOONE, as appellee in the above entitled cause, will ap-

pear before the Honorable Geo. C. Cosgrave, Judge of the above entitled court, on Monday, December 16, 1935, at the hour of 2:00 o'clock P. M. or as soon thereafter as counsel can be heard and will at said time call up for hearing appellee's motion to exclude certain documents referred to in appellants' praecipe herein from the transcript of record on the appeal taken by Mazie McLeod and Edwin J. Miller from the decision of the above entitled court entered herein on or about September 6, 1935.

Dated: December 11, 1935.

MOTT, VALLEE AND GRANT
and G. B. HUGHES,

By K. E. Grant

Attorneys for appellee

Dan Boone

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

In the Matter of)	
MARGARET E. TOOHEY,)	
)	
Bankrupt.)	
	)	No. 16976-C
	)	MOTION FOR EX-
	)	CLUSION FROM
MAZIE McLEOD and	)	TRANSCRIPT OF
EDWIN J. MILLER,	)	RECORD ON AP-
	)	PEAL OF PARTI-
Appellants,	)	CULAR DOCU-
	)	MENTS CALLED
vs.	)	FOR IN PRAE-
	)	CIPE OF
DAN BOONE and	)	APPELLANT.
HUBERT F. LAUGHARN,)	
Trustee,)	
)	
Appellees.)	

Comes now DAN BOONE, one of the above named appellees, and respectfully moves the court to exclude from the transcript of record herein upon the appeal taken by Mazie McLeod and Edwin J. Miller from the decision of this court made on or about September 6, 1935, the following documents referred to in the praecipe of appellants filed herein December 5, 1935:

1. GROUP ONE

a) Petition to have Margaret E. Tooley adjudged an involuntary bankrupt and the order of adjudication thereon;

b) A statement of all claims, and all claims filed against said estate;

c) Petition of Dan Boone filed March 13, 1935;

d) The order of the above entitled court striking out portions of evidence, and proposed amendments to statement of evidence.

e) The order of the above entitled court on the referee in bankruptcy to certify certain documents to this court, to be included in the transcript on appeal, dated September 23, 1935.

Motion for the exclusion of the above designated documents is made upon the ground that none of said documents constitutes any part of the record upon the above mentioned appeal of Mazie McLeod and Edwin J. Miller, and exclusion thereof from the record has heretofore been ordered by the above entitled court.

2. GROUP TWO

a) The petition for subrogation;

b) Amended objections to subrogation;

c) Order of subrogation;

d) Certificate of review

Motion to exclude the last mentioned documents is made on the ground that each thereof has been included by appellants in their condensed statement of evidence, already settled, signed and filed, and that the inclusion thereof in the record is but useless repetition.

Dated: December 11, 1935.

MOTT, VALLEE AND GRANT
and G. B. HUGHES,

By K. E. GRANT

Attorneys for appellee
Dan Boone.

WHEREAS, on December 16, 1935, at the hour of two o'clock P. M., before the Hon. George Cosgrave, Judge, said motion of the appellee, Dan Boone, was heard before the court; and the court being advised, granted said motion of said appellee and ordered that the following documents specified in the praecipe be stricken therefrom, and not be included in the record, to-wit:

GROUP ONE

a) Petition to have Margaret E. Tooley adjudged an involuntary bankrupt and the order of adjudication thereon;

b) A statement of all claims, and all claims filed against said estate;

c) Petition of Dan Boone filed March 13, 1935;

d) The order of the above entitled court striking out portions of statement of evidence, and proposed amendments to statement of evidence.

e) The order of the above entitled court on the referee in bankruptcy to certify certain documents to this court, to be included in the transcript on appeal, dated September 23, 1935.

GROUP TWO

- a) The petition for subrogation;
- b) Amended objections to subrogation;
- c) Order of subrogation;
- d) Certificate of review.

IT IS ORDERED BY THE COURT That the following documents be included in the transcript of the record, and none other, to-wit:

1. The petition of Dan Boone filed March 22, 1935.
2. Petition for review of subrogation.
3. Minute order of Judge Cosgrave made on or about September 6, 1935.
4. Petition for an appeal to the Circuit Court of *Appeal*, and Order allowing same.
5. Assignment of errors.
6. Citation on appeal, with proof of service.
7. Cost bond on appeal.

8. Statement of evidence, settled, signed and filed December 4, 1935.

9. Orders of court extending time for settling statement of evidence and filing transcript in Circuit Court of *Appeal*.

10. Your customary form of certificate of transcript.

IT IS FURTHER ORDERED That the clerk of this court shall make up said transcript composed of the foregoing documents.

Dated: December 20, 1935.

Geo. Cosgrave
JUDGE OF THE UNITED STATES
DISTRICT COURT.

Dec. 20, 1935.

Approved as to form as provided in Rule 44.

Mott, Vallee & Grant,
and Gilbert B. Hughes

By K. E. Grant

[Endorsed]: Received copy of the within Order this 20th day of December, 1935. Mott, Vallee & Grant and Gilbert B. Hughes, attorneys for appellees. Filed R. S. Zimmerman, Clerk at 10 min past 3 o'clock Dec. 20, 1935 P. M. By F. Betz, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 79 pages, numbered from 1 to 79, inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; petition for allowance on account of expenditures and services in behalf of bankrupt estate; petition for review of Referee's order; statement of evidence; order denying petition for review; petition for appeal; assignment of errors; order allowing appeal; cost bond on appeal; and order re praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this day of January, in the year of our Lord One Thousand Nine Hundred and Thirty-six and of our Independence the One Hundred and Sixtieth.

R. S. ZIMMERMAN,

Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.

